

HORWOOD MARCUS & BERK CHARTERED
500 W. Madison St., Suite 3700
Chicago, IL 60661
Telephone: (312) 606-3200
Facsimile: (312) 606-3232
Aaron L. Hammer
John W. Guzzardo

Attorneys for Horwood Marcus & Berk Chartered

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

SEARS HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**OBJECTION OF HORWOOD MARCUS & BERK CHARTERED TO DEBTORS'
NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH
GLOBAL SALE TRANSACTION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

1. The law firm of Horwood Marcus & Berk Chartered (“HMB”), hereby submits this limited objection to the cure amount proposed in connection with the potential assumption and assignment of the Debtors’ agreement with HMB, as listed in the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction* (Docket No. 1731) (the “Assumption and Assignment Notice”). In support of this limited objection, HMB states as follows:

2. On October 15, 2018 (“Petition Date”), the Debtors filed respective voluntary petitions for reorganization pursuant to chapter 11 of title 11 of the United States Code. Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as a debtor-in-possession, pursuant to 11 U.S.C. §§ 1107 and 1108.

3. HMB has provided legal services relating to a wide variety of tax matters to the Debtors and, specifically and more recently, Sears Holdings Management Corporation, for more than fifteen years.

4. As of the Petition Date, HMB had an unpaid balance due of **\$29,961.50** (“HMB Unpaid Amount”). The HMB Unpaid Amount represents the amount due for legal services provided pre-petition under the engagement agreement between the Debtors and HMB, as evidenced by, among other documents, letter agreements dating July 17, 2013 as amended or supplemented (generally, the “Engagement Agreement”). Payment of the HMB Unpaid Amount is necessary to cure all defaults under the Engagement Agreement before the Debtors may assume and assign that agreement.

5. The all invoices detailing the legal services underlying the HMB Unpaid Amount are available on request, but subject to confidentiality and without prejudice to applicable privileges. A report identifying all currently open invoices is attached hereto as Exhibit A.

6. The Assumption and Assignment Notice proposes a cure amount of \$17,162.00, or \$12,799.50 less than the HMB Unpaid Amount. (Assumption and Assignment Notice, Ex. A at No. 3497.)

7. Accordingly, HMB objects to the proposed cure amount in connection with the potential assumption and assignment of the Engagement Agreement to the extent such amount is less than the HMB Unpaid Amount of \$29,961.50.

8. HMB reserves the right to contest the assumption, assignment or rejection of the Engagement Agreement on any basis other than the proposed cure amount.

Dated: January 25, 2019

HORWOOD MARCUS & BERK CHARTERED

/s/ Aaron L. Hammer

Aaron L. Hammer (N.Y. Bar 4759080)
John W. Guzzardo
HORWOOD MARCUS & BERK CHARTERED
500 W. Madison St., Suite 3700
Chicago, IL 60661
Telephone: (312) 606-3200
Facsimile: (312) 606-3232
ahammer@hmblaw.com
jguzzardo@hmblaw.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing, **OBJECTION OF HORWOOD MARCUS & BERK CHARTERED TO DEBTORS' NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**, to be filed with the United States Bankruptcy Court, Southern District of New York on the 25th day of January, 2019. Notice and a copy of this filing will be served upon all counsel of record by operation of the Court's CM/ECF electronic filing system and on the following recipients as identified in Exhibit 1 to this Court's Order Approving Global Bidding Procedures and Granting Related Relief (Docket No. 816):

Bid Notice Parties

- a. Debtors
Rob Riecker
rob.riecker@searshc.com
Luke Valentino
luke.valentino@searshc.com
Mohsin Meghji
mmeghji@miiipartners.com
- b. Debtors' Counsel
Weil, Gotshal & Manges LLP
767 Fifth Avenue New York, New York 10153
Attn: Ray C. Schrock, P.C.
ray.schrock@weil.com
Jacqueline Marcus, Esq.
jacqueline.marcus@weil.com
Garret A. Fail, Esq.
garrett.fail@weil.com
Sunny Singh, Esq.
sunny.singh@weil.com
- c. Debtors' Investment Banker
Lazard Freres & Co., LLC
30 Rockefeller Plaza, New York, New York 10112

Attn: Brandon Aebersold Levi Quaintance
project.blue.rx@lazard.com

Buyer Parties

- d. Transform Holdco LLC
c/o ESL Partners, Inc.
1170 Kane Concourse, Suite 200 Bay Harbor Islands, FL 33154
Attn.: Kunal S. Kamlani
kunal@eslinvest.com
Harold Talisman
harold@eslinvest.com
- e. Counsel for Transform Holdco LLC
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attn: Christopher E. Austin
caustin@cgsh.com
Benet J. O'Reilly
boreilly@cgsh.com
Sean A. O'Neal
soneal@cgsh.com

Consultation Parties

- f. Attorneys for Bank of America, N.A., administrative agent under the
First Lien Credit Facility and the DIP ABL Agent
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square New York, NY 10036
Attn: Paul D. Leake, Esq.
paul.leake@skadden.com
Shana A. Elberg, Esq.
shana.elberg@skadden.com
George R. Howard, Esq.
george.howard@skadden.com
- g. Attorneys for the Official Committee of Unsecured Creditors
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park New York, New York 10036
Attn: Philip C. Dublin, Esq.
pdublin@akingump.com
Ira Dizengoff, Esq.
idizengoff@akingump.com
Sara Lynne Brauner, Esq.
sbrauner@akingump.com
- h. Attorneys to Wells Fargo Bank, National Association
Choate, Hall & Stewart LLP

Two International Place Boston, MA 02110
ksimard@choate.com
jmarshall@choate.com

/s/ Aaron L. Hammer